

Application No.: 10/658,074

Amendment and Response dated February 28, 2006

Reply to a Final Office Action of November 30, 2005

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Remarks/Arguments:

Introduction

Claims 1-3, 5, 7-11, 14-17, 19 and 21-28 are pending. Claims 1-3, 5, 7, 17, 19 and 21-28 currently stand rejected.

Claims 1-3, 5, 7-11, 14-17, 19 and 21-27 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U. S. Patent No. 357,027 to Ping (hereinafter Ping).

Claim 28 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Ping. Claims 12-13 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Ping in view of U.S. Patent 4,876,038 to Wigglesworth et. al.(hereinafter Wigglesworth).

Section 102 Rejections

Claims 1-3, 5, 7-11, 14-17, 19 and 21-27 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U. S. Patent No. 357,027 to Ping. Applicant respectfully traverses.

Ping is directed to improvements in churns described in part as;

“A refers to the body of the churn, which is mounted on suitable supports or legs, *a a*. This churn-body preferably consists of a rectangular structure having vertical sides, and a bottom, A’, to which bottom are rigidly secured circular blocks BB.

C refers to the top, which may be made in two sections, one of said sections being hinged to the other. The top is provided centrally with an upwardly-projecting standard, *d*, which is rigidly secured thereto, and is provided with a perforation, through which passes a bolt, *d'* for attaching the bar D to the same. The ends of the bar D have pivotally attached thereto, in suitable recesses, depending rods E E, said rods being

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provided at their lower ends with packing F, as will be hereinafter set forth.”

Accordingly, Ping fails to disclose the present invention because, *inter alia*, Ping fails to disclose a first linkage coupled to the base and a second linkage coupled to a base as in independent claims 1, 15, 26, 27 and 28.

The applicant respectfully submits that the Examiner’s characterization that “a 1st and 2nd linkages including two linkage rocker bars D(left side) or D(right side), (respectively left or respectively right of the base connection pivot point d’) being connected to the base through a connection point d,” is incorrect. The specification of Ping at column 1, line 33-37, quoted above states

“The top is provided centrally with an upwardly-projecting standard, d, which is rigidly secured thereto, and is provided with a perforation, through which passes a bolt, d’ for attaching the bar D to the same.”

Clearly, the first and second linkage rocker bar is connected to the top C. Thus, the Examiner’s attempt to construe the top C of Ping as being one in the same with body A or bottom A’ is contrary to the teachings of Ping, and accordingly the rejections should be withdrawn.

Thus, Ping fails to disclose the present invention as presently defined by independent claims 1, 15, 26, 27 and 28. Therefore, reconsideration and withdrawal of the rejection of claims independent claims 1, 15, 26, 27 and 28, and all claims dependent therefrom, specifically dependent Claims 2-3, 5, 7-11, 14, 16-17, 19 and 21-25 are respectfully requested.

Section 103 Rejections

Claim 28 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Ping, Claims 12-13 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Ping in view of U.S.

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Patent 4,876,038 to Wigglesworth et. al.(hereinafter Wigglesworth). Applicant respectfully traverses.

As noted above, Ping teaches an upwardly projecting standard rigidly secured to the top for attaching bar D. Wigglesworth fails to cure the deficiencies of Ping.

Wigglesworth teaches an apparatus for making a post-foaming gel from a gel base and foaming agent. Specifically Wigglesworth discloses the use of a conduit to;

“cycle the gel base through the first and second conduits 38 and 40 and heat exchanger 36 while introducing the foaming agent through the valve 42 into the first conduit 38 and apparatus 10”

Thus Wigglesworth teaches away from the current invention in that it discloses the use of the conduits 38 and 40 to carry the gel base into a third chamber, apparatus 10, which is in contrast to the two chambers of the present invention.

In establishing a *prima facie* case of obviousness, cited references must be considered for the entirety of their teachings. *Bausch & Lomb, Inc. v. Barnes-Hind, Inc.*, 230 U.S.P.Q. 416, 419 (Fed. Cir. 1986). Further, it is impermissible during examination to pick and choose from a reference only so much that supports the alleged rejection. *Id.* Thus, the express teachings of Ping and Wigglesworth which would lead one away from the present invention may not be ignored during examination. The Examiner cannot pick and choose from a reference only those teachings that are useful to his position, but must consider the teachings of the reference as a whole. Thus, the Examiner cannot ignore the express teachings of Ping requiring the upward standard secured to the top for attaching bar D and the express teachings of Wigglesworth

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requiring a third chamber. Such contrary and disparate teachings provide no motivation to proceed in the direction of the present invention.

Moreover, it is well established that hindsight reconstruction of a reference does not present a *prima facie* case of obviousness and any attempt at hindsight reconstruction using Appellant's disclosure is strictly prohibited. *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1445-46 (Fed. Cir. 1993). As Ping or Wigglesworth, individually or in combination, fail to teach or suggest a first linkage coupled to the base and a second linkage coupled to a base, the Action is apparently using the teachings of the subject application to modify Ping and Wigglesworth, individually or in combination, to arrive at the present invention. Such a modification is hindsight reconstruction, which is strictly prohibited.

Thus, one of ordinary skill in the art would not be motivated to combine such contrary references in an attempt to arrive at the present invention. Moreover, even if the references were combined, the resultant teaching would not result in the present invention.

Thus, Ping and Wigglesworth, individually or in combination, fail to teach or suggest the present invention. Therefore, reconsideration and withdrawal of the rejections of claims 28 and 12-13, and all claims dependent therefrom, are respectfully requested.

Summary

Therefore, Applicants respectfully submit that independent claims 1, 15, 26, 27 and 28, and all claims dependent therefrom, including claims 2-3, 5, 7-11, 14, 16-17, 19 and 21-25, are patentably distinct. This application is believed to be in condition for allowance. Favorable action thereon is therefore respectfully solicited, including consideration and allowance of claims 1-3, 5, 7-11, 14-17, 19 and 21-28.

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Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Respectfully submitted,



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